UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARVIN BELSER,

      Plaintiff,

v.

VONDA R. EVANS, et al.,

      Defendants.

Case No. 18-12592
Honorable Laurie J. Michelson

**OPINION AND ORDER DENYING PLAINTIFF'S APPLICATION FOR LEAVE
TO PROCEED WITHOUT PREPAYMENT OF THE FILING FEE
AND DISMISSING THE CIVIL RIGHTS COMPLAINT**

Marvin Belser has filed a *pro se* complaint against a Wayne County Circuit Court Judge
and an Assistant Wayne County Prosecutor, which seems to raise claims concerning possible bias
in his criminal trial. He has filed an application to proceed without prepayment of fees or costs.
See 28 U.S.C. § 1915(a)(1). But because Belser has filed three prior civil cases that have been
dismissed pursuant to 42 U.S.C. § 1915(g), and because Belser has failed to demonstrate that he
is "under imminent danger of serious physical injury," his request will be denied and this case
dismissed.

Under the Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321
(1996), a prisoner is prevented from proceeding *in forma pauperis* in a civil action under certain
circumstances. For one, the "three strikes" provision allows the Court to dismiss a case if, on three
or more previous occasions, a federal court has dismissed the prisoner's action because it was
frivolous or malicious or failed to state a claim for which relief may be granted. 28 U.S.C. §
1915(g) (1996); *Taylor v. First Medical Mgmt.*, 508 F. App'x 488, 491 (6th Cir. 2012).

Belser has filed at least three prior civil rights complaints which have been dismissed for failure to state a claim upon which relief may be granted or under the "three strikes" provision. *See Belser v. Evans*, No. 2:16-cv-13934, 2016 U.S. Dist. LEXIS 174671, 2016 WL 7337260 (E.D. Mich. Dec. 19, 2016) (slip op.); *Belser v. Borgerding*, No. 2:16-cv-13296, 2016 U.S. Dist. LEXIS 164721, 2016 WL 6995739 (E.D. Mich. Nov. 30, 2016) (slip op.); *Belser v. Washington*, No. 1:16-cv-1205, 2016 U.S. Dist. LEXIS 148837, 2016 WL 6275343 (W.D. Mich. Oct. 27, 2016) (slip op.); *Belser v. Evans*, No. 2:16-cv-12792, 2016 U.S. Dist. LEXIS 137278, 2016 WL 5791451 (E.D. Mich. Oct. 4, 2016) (slip op.).

Even with "three strikes," a plaintiff may still proceed IFP if he adequately alleges that he is "under imminent danger of serious physical injury" at the time he files the complaint. 28 U.S.C. § 1915(g); *Taylor*, 508 F. App'x at 491; *Vandiver v. Vasbinder*, 416 F. App'x 561, 561–562 (6th Cir. 2011). While Belser asserts that he was beaten by a fellow inmate in 2014, the complaint is devoid of any allegation that he is in imminent danger of serious physical injury as the result of the conduct of the Defendants, and his complaint is therefore subject to dismissal under the three-strikes provision.

In closing, the Court notes that while Belser styled his complaint as one raising claims under section 1983, he also seeks to overturn his criminal convictions and be given immediate release from prison. (R. 1, PageID.17). This relief is more indicative of a habeas corpus petition. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). But Belser previously filed a habeas petition, *Belser v. White*, No. 08-11836, 2010 WL 3239244 (E.D. Mich. July 30, 2010)), and he has not obtained permission from the Sixth Circuit to file a successive petition. *See* 28 U.S.C. § 2244(b)(3)(A); *King v. Morgan*, 807 F.3d 154, 156–57 (6th Cir. 2015). So at this time, the Court will not consider this as a successive habeas petition.

Accordingly, the Court DENIES Plaintiff's application for leave to proceed without prepayment of the filing fee. Additionally, the Court DISMISSES the complaint pursuant to 28 U.S.C. § 1915(g). This dismissal is without prejudice to Plaintiff filing a new complaint with payment of the filing fee.

SO ORDERED.

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

Date: October 9, 2018

I hereby certify that a copy of the foregoing document was served upon Plaintiff on this date, October 9, 2018, by first-class U.S. mail.

s/William Barkholz
Case Manager